

FPS - 311

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 07-4552

Rush v. Correctional Medical Services, Inc.

To: Clerk

- 1) Motion by Appellant To Proceed In Forma Pauperis;
- 2) Appellant's Document entitled "Emergency Preliminary Injunction for Imminent Harm and TRO";
- 3) Appellee's Response.

The foregoing motion to proceed in forma pauperis is granted. Appellant is a prisoner and seeks to proceed in forma pauperis on appeal. Appellant is required to pay the full \$455.00 fee in installments regardless of the outcome of the appeal. The Court hereby directs the warden or his or her designee to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six month period immediately preceding the filing of the notice of appeal. The warden, or his or her designee, shall calculate, collect, and forward the initial payment assessed in this order to the United States District Court for the District of Delaware. In each succeeding month when the amount in the prisoner's account exceeds \$10.00, the warden, or his or her designee, shall forward payments to the United States District Court for the District of Delaware equaling 20% of the preceding month's income credited to the prisoner's account until the fees are paid. Each payment shall reference the appellate docket number for this appeal.

The appeal will be submitted to a panel of this court for determination under 28 U.S.C. § 1915(e)(2) as to whether the appeal will be dismissed as legally frivolous or

whether summary affirmance under Third Circuit L.A.R. 27.4 and I.O.P. 10.6 is appropriate. In making this determination, the district court opinion and record will be examined. No briefing schedule will issue until this determination is made. Although not necessary at this time, appellant may submit argument, not to exceed 5 pages, in support of the appeal. The document, with certificate of service, must be filed with the clerk within 21 days of the date of this order. Appellee need not file a response unless directed to do so or until a briefing schedule is issued. Appellant's document entitled "Emergency Preliminary Injunction for Imminent Harm and TRO," Appellee's response thereto, and Appellee's Motion to Seal will all be sent to the same panel of this Court that will determine whether dismissal pursuant to 28 U.S.C. § 1915(e)(2) or summary action is appropriate in this case.

For the Court,

/s/ Marcia M. Waldron

Clerk

Dated: May 15, 2008

SLC/cc: David R. Rush

James E. Drnec, Esq.



Marcia M. Waldron

Marcia M. Waldron, Clerk